

ID: CCA_2008111909261650

Number: **200909040**

Release Date: 2/27/2009

Office:

UILC: 4101.00-00, 4082.00-00

From:

Sent: Wednesday, November 19, 2008 9:26:19 AM

To:

Cc:

Subject: " " case

Here's a description of how the registration rules might apply to the dyeing case we've been discussing.

Section 48.4101-1(i)(2) allows the IRS to suspend or revoke a terminal operator's registration, require a bond, and/or require the operator to file monthly or semimonthly returns due to its creation of a significant risk of nonpayment of tax (in this case, by passing out dye packs in hopes that somebody else would dye the fuel properly). Additionally, the operator most likely violated the conditions of registration under § 48.4101-1(h)(3)(iii) and (v) which provide that records be maintained relating to dye and a prohibition for issuing a bill of lading, shipping paper, etc. indicating fuel was dyed according to § 48.4082-1 when it was not.

If the IRS revoked the operator's registration, the IRS may also be able to make an adverse action against the registration of the operator's parent. The definition of related party is pretty broad under § 48.4101-1(b)(5). Under § 48.4101-1(b)(5)(i-iii), an entity is related to an applicant if it exercises control, owns 5% or more, or is liable for that entity's taxes. It seems that this is a one way street, such that a parent is related to its subsidiary but a subsidiary is not related to its parent. However, § 48.4101-1(b)(5)(iv) makes members of an affiliated group related and (v) makes entities with exchanges with carryover bases related as well. Their relationship would have to be verified, but the following assumes they are related thus falling under (iv) above.

A registrant must meet the 3 tests (activity, acceptable risk and adequate security tests) listed in § 48.4101-1(f)(1). Focusing on the parent's registration, the test that appears relevant is the acceptable risk test. That test is further described in § 48.4101-1(f)(3). It provides that an applicant only meets this test if neither the applicant nor a related party has been penalized for a wrongful act. Having a registration revoked is a wrongful act under § 48.4101-1(b)(4)(vi). By revoking the operator's registration, the parent (as well as all other related companies) fail the acceptable risk test. The IRS could also consider whether the parent has a satisfactory tax history (described in § 48.4101-1(f)(4)(iii)) as the IRS may not be satisfied with the operator's tax payment history. From this point the IRS we would have to revoke or suspend the parent's registration under § 48.4101-1(i)(1)(i) because the parent does not meet one or more of the registration tests under § 48.4101-1(f)--.